



Vertical relations in the delivery of health care: a review of practical experiences of competition policy in the US and EU

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Objectivos (Objectives): In order to achieve value for money through efficiency gains a common trend in many developed countries has been a movement towards deregulation of the healthcare sector. Despite this common trend, differences in the practical competition policy experience exist between the United States (US) and European countries. We conduct a broad review of law cases and regulatory recommendations on vertical restraints in the US and in the European Union (EU) aimed at exploring such differences.

Metodologia (Methodology): A comprehensive review of law cases was performed using a bibliographic search on the Westlaw International databases, the European Union EurLex database and databases of three national regulatory bodies in the Netherlands, Portugal and United Kingdom. The search was conducted from May to July 2010. Crossreferences of law cases were also used in the identification of the cases. We limited our search to vertical relations as a rich literature already exists on horizontal issues.

Resultados (Results): The results suggest that antitrust enforcement has a longer history and has been stricter in the US, while most European countries have relied mainly on public sector provision, thus not specifically targeted by competition policy until recently. Vertical contractual relations have not been challenged in the EU, and vertical mergers have consistently been approved. On the contrary, in the US, exclusive contracts between hospitals and specialists have been challenged by courts, and collusive behavior through Most Favored Nation clauses has been sanctioned.

Conclusões (Conclusions): Antitrust enforcement has been more active in the United States than in the EU, possibly because, until recently, most European countries have relied mostly on the public sector for price and quantity determination. As the market for the delivery of health care is becoming increasingly vertically integrated in Europe too, we foresee a need for closer scrutiny of vertical issues to avoid anticompetitive effects on patients.